IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-1375

CITY OF HICKORY HILLS, ILLINOIS, A MUNICIPAL CORPORATION,

Petitioner,

vs.

THE VILLAGE OF BRIDGEVIEW, ILLINOIS, A MUNICIPAL CORPORATION, EDWARD V. HANRAHAN, STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS, WALTER FRECH, IRENE FRECH, WILLIAM CAZEAU, MARLENE CAZEAU, JOSEPH SALECKI, RUTH SALECKI, ROBERT BILY, BEVERLY BILY, LOUIS BULGER, EDNA BULGER, ARCHER REALTY COMPANY, INC., AN ILLINOIS CORPORATION, AND TERMINAL CITY CORPORATION, FORMERLY KNOWN AS CLEARING REALTY SALES, INC., AN ILLINOIS CORPORATION,

Respondents.

REPLY TO ANSWER OF THE VILLAGE OF BRIDGEVIEW, ILLINOIS, TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND THE APPELLATE COURT OF THE STATE OF ILLINOIS, FIRST DISTRICT, JOINTLY OR IN THE ALTERNATIVE.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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This court has jurisdiction to entertain this Petition for a Writ of Certiorari pursuant to both 28 U. S. C. § 1257(3) and 28 U. S. C. § 2101(c) because this is an appeal taken within 90 days from the entry of an order of the Illinois Supreme Court denying a prayer to vacate a judgment of dismissal in Docket 36087 in 1961 and leave to appeal in docket 44798 in 1972.

The petitioner, City of Hickory Hills, prayed:

> "Defendant-Petitioner the City of Hickory Hills, . . . prays that, upon review by this Court, the judgments of the Appellate Court and the Circuit Court be reversed, and that the cause be remanded to the Circuit Court with directions to enter a judgment in favor of defendant; *and further, that the order entered by this Court on the 14th Day of March, 1961 dismissing the appeal in People ex rel. Benjamin S. Adamowski, State's Attorney of Cook County, Appellant* v. *The Village of Bridgeview, a Municipal Corporation, Appellee, Docket No. 36087, be vacated.*" [Emphasis added.] (Pages 1 and 2, Petition for Leave to Appeal, Docket No. 44798, Item No. 11 in the Index of Documents Transmitted to the Supreme Court of the United States.)

The Supreme Court of Illinois (Appendix H, page A28) on January 26, 1972, ruled:

> And now on this day the Court having duly considered the Petition for Leave to Appeal herein and being now fully advised of and concerning the premises, *doth overrule the prayer of the petition and denies Leave to Appeal herein.* [Emphasis added.]

Section 2101(c) clearly states that "any judgment or decree in a civil action, suit or proceeding" shall be brought within 90 days, and there can be no question that the foregoing prayer and denial falls within the meaning of Section 2101(c). Throughout the trial and appellate proceedings it was charged that the Order of March 14, 1961, of the Illinois Supreme Court was void, and that the void order could not be the basis for a *res judicata* decision. The determination of the issues in Docket 36087 on the merits was necessary and was indivisible from a determination on the merits in the Illinois Appellate Court Docket 54923. The Respondent states that the parties and record in Docket 36087 are not properly before this Court, yet without that record, a proper determination cannot be

made. The January 26, 1972, order of the Illinois Supreme Court was a final one affecting both cases; therefore this court has jurisdiction of docket 36087 under the provisions of 28 U. S. C. § 2101(c).

Supreme Court Rule 23(5) provides that a single petition for a writ of certiorari shall suffice for all cases where both cases involve closely related questions, as in the instant case. The rule does not necessarily preclude review of interrelated cases which might span a decade, if the determination of one is contingent upon the determination of the other. The rule is not self-restrictive to contemporary and concurrent cases involving diverse parties where the differences between the cases are unsubstantial. The rule has equal application to the instant case. Historically this Court has charted new courses of law and Rule 23(5) is a proper vehicle herein.

Your petitioner further suggests that this writ of certiorari may be directed at both the Illinois Supreme Court and the Illinois Appellate Court jointly or in the alternative. While this may seen unique, the petitioner suggests it is a proper course herein. If the Illinois Appellate Court is bound by the order of dismissal of the Illinois Supreme Court insofar as the Appellate Court deems it necessary to the disposition of Docket 54923, then a joint or alternative writ to the Illinois Supreme Court is required for a determination of Docket 36087 (the 1961 case) and ultimately Docket 44789.

Moreover, notwithstanding the fact that the instant case falls within the scope of Section 2101(c), insofar as a "statutory writ of certiorari" can be directed to the Illinois Supreme Court, this Court has the authority and jurisdiction under 28 U. S. C. § 1651(a) to issue a "common-law writ of certiorari." The authority of the Supreme Court to issue a writ of certiorari and to examine the proceedings of an inferior court so far as may be necessary to ascertain

whether that court has exceeded its jurisdiction and authority is no longer open to question. When the circumstances demand it, the Writ may be allowed by the Supreme Court, as at common-law, to correct excesses of jurisdiction and in the furtherance of justice. Your petitioners have filed the certified record of Docket 36087 with the Clerk of this Court and all the requirements to entertain a petition for the extraordinary Writ or common-law writ have been substantially complied with except for a formal and separate motion for leave to file a petition for the writ.

We respectfully suggest that when a writ of certiorari issues, it does not bear a label indicating that it is a "statutory writ" or a "common-law writ." A writ is a writ, notwithstanding any niceties of distinction which may be read into or crop up in the statutes according to various interpretations. The Hickory Hills petition clearly demonstrates that the Illinois Supreme Court acted in excess of its jurisdiction. The interests of justice are best served when the integrity of our judicial system is maintained and principles of law and order are preserved. When a substantial federal question arises, as in the instant case, we respectfully submit that this Court should exercise its jurisdiction.

The respondent's suggestion that the petitioner, being merely a creature of the State and as such is not protected by the due process guaranty of the Fourteenth Amendment against State action belies what we believe to be the true essence of due process. Certainly any municipal corporation, or even a political subdivision, may be divided, altered, enlarged, or abolished as a state may dictate insofar as its boundaries or area is concerned. But so long as that municipal corporation exists, it must be entitled to the same rights and privileges as any other party before the courts. This is not a question of enlargement or diminishment of territory, but is a question of judicial standing before the courts. If a municipal corporation

is not protected against an abuse of the due process guaranty, under the Fourteenth Amendment to the United States Constitution, can it even have standing to sue or be sued? We suggest that whenever any court secures jurisdiction over a party, be that party a municipal corporation or not, then the due process guaranty attaches for all purposes.

The respondent suggests that we have raised the constitutional question for the first time on appellate level. Yet the question was briefed in the trial court and argued in the Appellate Court. The question was placed before the Illinois Supreme Court in the Petition for Leave to Appeal. Difficult of precise definition, a question involving due process by its very nature can arise at any stage of the proceedings.

Notwithstanding whether the question was raised in the inferior courts, and the petitioner takes the position that the Question was properly raised in every stage of the proceedings, we suggest that the Illinois Supreme Court itself by denying the Petition for Leave to Appeal acted in a manner so as to deny due process.

Noting the effect to the Order of Dismissal in docket 36087, during oral argument the Appellate Court asked counsel for the petitioner if he would have that court overrule the Illinois Supreme Court. It had always been suggested by the petitioner that the challenged Supreme Court order was void, therefore the Appellate Court could decide conflicting decisions of concurrent trial courts on the merits. An adverse decision by the Appellate Court generated the Petition for Leave to Appeal to the Illinois Supreme Court in order that it might correct the anamolous situation. By its subsequent action, the Supreme Court of Illinois in refusing to vacate its void order denied the petitioner due process, and the issue was joined.

We agree that sound principles underlie *res judicata*, but we suggest that due process requires judicial review of procedures and circumstances where there has been a misapplication of the principle, as in the instant case. This does not cause immortal litigation, for without a proper review, there might well be endless litigation. The respondent attempts to skirt the fundamental issue by describing the instant case as a specious attack on purported annexations allegedly in effect for fifteen years on the premise that to render an adjudication on the merits would not be in the public interest. We submit that on the scales of justice, more emphasis, weight and consideration should be given to the integrity of the law and our reliance upon established judicial principles than to merely public or private inconvenience involving problems relating to territorial jurisdiction. Development of property and expansion of utilities based upon void annexations cannot weigh heavier than the public's interest in the preservation of sound legal principles and due process as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

CONCLUSION.

For the foregoing reasons and the reasons urged in our Petition, we respectfully urge that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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